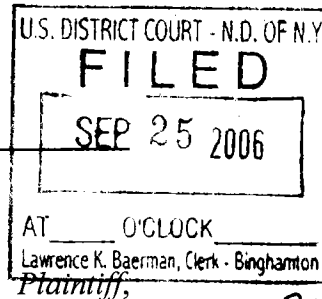


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



LUTHER LOPEZ,

ORDER

-against-

9: 02-CV-1465

NATHAN PERRY,

TJM/GJD

Defendant

APPEARANCES:

OF COUNSEL:

Robert N. Isseks, Esq.
6 North Street
Middletown, NY 10940
For Plaintiff

ROBERT N. ISSEKS, ESQ.

Christopher E. Gurda, Esq
41 Dolson Avenue
Middletown, New York 10940
For Plaintiff

CHRISTOPHER E. GURDA, ESQ.

ELIOT SPITZER
Attorney General of the State of New York
The Capitol
Albany, New York 12224-0341
For Defendant

KELLY L. MUNKWITZ, ESQ.
JANICE A. DEAN, ESQ.
Assistant Attorneys General

ORDER

McAvoy, D.J.:

Defendant having moved for summary judgment in this action or, in the alternative that he is entitled to qualified immunity, and plaintiff having opposed the motion and moved for summary judgment in his favor,

NOW, upon consideration of all papers submitted in support and opposition to the above motions, to wit:

1. Notice of Motion on behalf of defendant Nathan Perry, dated June 28, 2006;
2. Declaration of Kelly L. Munkwitz, dated June 28, 2006, with attached exhibit;
3. Declaration of Nathan Perry, dated June 28, 2006;
4. Statement of Material Facts on behalf of Nathan Perry, dated June 28, 2006;
5. Memorandum of Law in Support of Defendant's Motion for Summary Judgment, dated June 28, 2006;
6. Notice of Cross-Motion on behalf of plaintiff Luther Perry, dated June 29, 2006;
7. Declaration of Robert N. Isseks, dated June 29, 2006;
8. Statement of Material Facts on behalf of Luther Lopez, dated June 29, 2006;
9. Memorandum of Law in Support of Plaintiff's Cross-Motion for Summary Judgment, dated June 29, 2006;
10. Defendant's Response to Plaintiff's Statement of Material Facts, dated July 28, 2006; and,
11. Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment, dated July 28, 2006,

AND, the Court entertaining oral argument on August 14, 2006, with Robert N. Isseks, Esq. having appeared for the plaintiff and Eliot Spitzer, Attorney General of the State of New York, Kelly L. Munkwitz, of counsel, having appeared for the defendant, and having duly deliberated upon these matters, and thereupon issuing an oral Decision from the bench, it is hereby

ORDERED, that plaintiff's cross-motion for summary judgment be and the same is hereby denied, and it is further

DEFENDANT'S

ORDERED, that ~~plaintiff~~ ^{plaintiff}'s motion for summary judgment be and the same is hereby granted, and judgment shall be entered by the Clerk dismissing the complaint and this action against the defendant.

Dated: Binghamton, New York

~~August~~, 2006

Sept. 25



Hon. Thomas J. McAvoy
UNITED STATES DISTRICT COURT JUDGE

Approved as to Form

Robert N. Isseks, Esq.
Counsel for plaintiff